

August 5, 2002

D.T.E. 01-31-Phase I-A

Investigation by the Department of Telecommunications and Energy on its own Motion into the Appropriate Regulatory Plan to succeed Price Cap Regulation for Verizon New England, Inc. d/b/a Verizon Massachusetts' intrastate retail telecommunications services in the Commonwealth of Massachusetts

ORDER ON ATTORNEY GENERAL'S MOTION FOR RECONSIDERATION AND
MOTION FOR EXTENSION OF THE JUDICIAL APPEAL PERIOD, AND AT&T
COMMUNICATIONS OF NEW ENGLAND, INC.'S MOTION FOR CLARIFICATION

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ORDER ON ATTORNEY GENERAL'S MOTION FOR RECONSIDERATION AND
MOTION FOR EXTENSION OF THE JUDICIAL APPEAL PERIOD, AND AT&T
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I. INTRODUCTION

On May 8, 2002, the Department of Telecommunications and Energy (“Department”) issued an Order, D.T.E. 01-31-Phase I (“Phase I Order”), granting in part, and denying in part, Verizon’s request for market-based pricing flexibility for its retail business services. In its Phase I Order, relying on a three-pronged market power analysis of competitor supply elasticity, market share, and demand elasticity, the Department found that there was sufficient competition in the Massachusetts retail business market to permit Verizon upward pricing flexibility for the majority of its retail business services. Phase I Order at 89-90. The Department concluded, however, that downward pricing flexibility for Verizon’s retail business services would enable Verizon to engage in a “price squeeze” with respect to competitors that relied on Verizon’s unbundled network elements (“UNEs”). Id. at 90. Therefore, the Department implemented an enhanced price floor for Verizon’s retail business services, equal to the density-zone specific UNE rates for the elements that make up the service, plus a mark-up for Verizon’s retailing costs as reflected in the wholesale discount. Id. at 91.

In the Phase I Order, the Department also made a series of “tentative conclusions” regarding regulation of Verizon’s retail residential services, in order to provide guidance to parties as to issues to be discussed in Phase II of the proceeding. Id. at 99-104. On the last day of the appeal period, May 28, 2002, the Attorney General of the Commonwealth of

Massachusetts (“Attorney General” or “AG”), filed with the Department a Motion for Reconsideration of the Phase I Order (“AG Motion to Reconsider”) and a Motion for Extension of the Judicial Appeal Period until 20 days after the Department’s decision on the Motion to Reconsider (“AG Motion to Extend”). Also on May 28, 2002, AT&T Communications of New England, Inc. (“AT&T”) filed a Motion for Clarification on the Scope of the May 8, 2002 Phase I Order and the Scope of Phase II (“AT&T Motion for Clarification”). No other party filed comments on the Attorney General’s Motion to Reconsider, Motion to Extend, or AT&T’s Motion for Clarification.

II. MOTION FOR RECONSIDERATION

A. Position of the Attorney General

In his Motion to Reconsider, the Attorney General argues that the Department’s treatment of certain elements of its market analysis in its Phase I Order were the result of inadvertence or mistake, and, thus, should be reconsidered by the Department (AG Motion to Reconsider at 1). Although the Attorney General acknowledges that the record shows that some wire centers in Massachusetts are sufficiently competitive, he argues that the Department incorrectly combined competitive wire centers with non-competitive wire centers in order to determine a state-wide average market share (id. at 5). The Attorney General argues that this state-wide average market share “does not meet any criteria for sufficiently competitive” (id.). The Attorney General further argues that the ability for competitors to enter a market does not provide adequate protection from potential price hikes by Verizon to its business customers (id. at 5-6). Further, the Attorney General does not agree with the Department’s conclusion to

allow geographic deaveraging of retail business rates, because, according to the Attorney General, geographic deaveraging does not allow “the benefits of competition [to] flow to all customers” (id. at 6). The Attorney General argues that, when the Department reconsiders its analysis, it should use a wire center analysis, rather than a state-wide analysis, to determine exactly where sufficient competition exists in Massachusetts (id.).

Further, the Attorney General argues that three reasons support his contention that the Department’s determination in the Phase I Order of a moderately high supply elasticity for competitive local exchange carriers (“CLECs”) in Massachusetts is unsupported by the record (id. at 6-7). First, the Attorney General argues that there is no evidence that the “threat of competition” can deter price hikes as effectively as actual competition (id. at 7). Second, the Attorney General argues that there is no evidence to show that CLECs will react to price hikes in the same manner throughout the state (id.). Finally, the Attorney General argues that there is no evidence to support the conclusion that resellers will continue to be able to provide service given “Verizon’s proposal to . . . reduce the resale margin in docket D.T.E. 01-20”¹

¹ While the Attorney General is correct in that the resale discount is currently subject to an open Department investigation, D.T.E. 01-20-Part B, that portion of the investigation is currently on hold pending a ruling by the Federal Communications Commission (“FCC”) on the remand of its resale cost methodology. See Investigation by the Department of Telecommunications and Energy on its own Motion into the Appropriate Pricing, based upon Total Element Long-Run Incremental Costs, for Unbundled Network Elements, and the Appropriate Avoided Cost Discount for Verizon New England, Inc. d/b/a Verizon Massachusetts’ Resale Services in the Commonwealth of Massachusetts, D.T.E. 01-20, at 15, Interlocutory Order on Part B Motions (April 4, 2001).

(id.). Based on these arguments, the Attorney General contends that the Department must reconsider its conclusion that there is a moderately high CLEC supply elasticity (id. at 6-7).

In addition, the Attorney General argues that the Department's conclusion that CLEC market share is high enough to support a finding of sufficient competition is not consistent with Department precedent (id. at 7). The Attorney General argues that, although the Department has no "bright line" test for market share when evaluating sufficiency of competition, it has adopted a "moving line" in this case that is inconsistent with previous decisions (id. at 8). The Attorney General argues that the Department's determination regarding adequate market share to support a finding of sufficient competition in a previous case, AT&T Alternative Regulation, D.P.U. 91-79 (1992), conflicts with the Department's finding regarding Verizon's higher market share in the Phase I Order (id.). The Attorney General argues that shifting the market share standard downward violates the doctrine of reasoned consistency because the Department did not adequately explain the deviation (id.).

Further, the Attorney General argues that the Department's finding in the Phase I Order of sufficient competition based on the three factors of supply elasticity, market share, and demand elasticity is not supported by the record (id. at 8-9). The Attorney General argues that the record in this case shows that Verizon did not meet the requirements for two of the three factors (id. at 9). Specifically, the Attorney General argues that even if the record does show "moderately high supply elasticity across the state," the record also shows a low demand elasticity and a Verizon market share greater than AT&T's market share in D.P.U. 91-79 (1992) (id.). The Attorney General argues that the Department has changed its standard of

review by relying solely upon the supply elasticity factor, rather than using the three-pronged approach, and has thereby denied the parties due process (id.).

In addition, the Attorney General asserts that the Department's "tentative conclusions" in the Phase I Order regarding retail residential rates are inappropriate, beyond the scope of the proceeding, and unsupported by record evidence (id. at 9-10). The Attorney General argues that the Department "specifically rejected the submission of evidence and arguments regarding these issues," and, therefore, the Department must reconsider its determinations regarding residential rates (id. at 10). Finally, the Attorney General argues that a May 24, 2002 decision of the United States Court of Appeals for the District of Columbia Circuit ("D.C. Circuit Court")² concerning the unbundling of network elements will dramatically change the type of data presented in the hearings in this case (id. at 11). The Attorney General argues that the D.C. Circuit Court's decision will eliminate all UNE-supplied competition to Verizon, drastically changing CLEC supply elasticity and market share, thereby skewing the Department's findings in the Phase I Order (id. at 11-12).

B. Standard of Review

The Department's policy on reconsideration is well settled. Reconsideration of previously decided issues is granted only when extraordinary circumstances dictate that we take a fresh look at the record for the express purpose of substantively modifying a decision reached after review and deliberation. Boston Edison Company, D.P.U. 90-270-A at 2-3

² United States Telecom Ass'n v. FCC, Case Nos. 00-1012 and 00-1015 (D.C. Cir. May 24, 2002).

(1991); Essex County Gas Company, D.P.U. 87-59-A at 2 (1988); Western Massachusetts Electric Company, D.P.U. 85-27-C at 12-13 (1987); Hutchinson Water Company, D.P.U. 85-194-B at 1 (1986).

A motion for reconsideration should bring to light previously unknown or undisclosed facts that would have a significant impact upon the decision already rendered. It should not attempt to reargue issues considered and decided in the main case. Boston Edison Company, D.P.U. 90-270-A at 3 (1991); Western Massachusetts Electric Company, D.P.U. 84-25-A at 6-7 (1984); Boston Edison Company, D.P.U. 1720-B at 12 (1984); Hingham Water Company, D.P.U. 1590-A at 5-6 (1984); Boston Edison Company, D.P.U. 1350-A at 4 (1983); Trailways of New England, Inc., D.P.U. 20017, at 2 (1979); Cape Cod Gas Company, D.P.U. 19665-A at 3 (1979).³ Alternatively, a motion for reconsideration may be based on the argument that the Department's treatment of an issue was the result of mistake or inadvertence. Massachusetts Electric Company, D.P.U. 90-261-B at 7 (1991); New England Telephone and Telegraph Company, D.P.U. 86-33-J at 2 (1985).

C. Analysis and Findings

For the reasons discussed below, we determine that the Attorney General's motion for reconsideration of the Department's Phase I Order does not meet the standard of review for reconsideration. The Attorney General's motion does not bring to light any previously

³ The Department has denied reconsideration when the request rests on an issue or updated information presented for the first time in the motion for reconsideration. See generally, Western Massachusetts Electric Company, D.P.U. 85-270-C at 18-20 (1987); Western Massachusetts Electric Company, D.P.U. 86-280-A at 16-18 (1987).

unknown or undisclosed facts, nor does it expose any Department findings based on inadvertence or mistake, but merely reargues issues considered and decided in the main case.⁴ Therefore, we deny the motion.

First, the Department examined both the actual market share of Verizon and its competitors as well as the overall trend in the Massachusetts retail business market in making its determinations in the Phase I Order. The Department found that business customers could switch from the incumbent to CLECs if they so desired, and, in fact, were doing so in increasing numbers. Phase I Order at 88. Moreover, in his Motion to Reconsider at 8, the Attorney General misstates the Department's conclusion in its earlier evaluation of sufficient competition, AT&T Alternative Regulation, D.P.U. 91-79 (1992). Contrary to the Attorney General's interpretation, in that case the Department found that AT&T's market share, while large, did contribute to a finding of sufficient competition for AT&T's "Category M" services. See D.P.U. 91-79, at 32. Therefore, the Department's conclusions on market share in the Phase I Order are not inconsistent with Department precedent as the Attorney General has argued. It is also important to note that AT&T's market share in D.P.U. 91-79 has never been designated by the Department as a "bright line" test for market share when evaluating sufficiency of competition. Phase I Order at 79.

⁴ The Attorney General also argues that a recent decision of the D.C. Circuit Court establishes new law which materially affects the Department's Phase I Order (AG Motion to Reconsider at 11-12). However, as discussed further below, we disagree with the Attorney General's interpretation of the effect of the Court's ruling, and, therefore, we find that this argument provides an insufficient basis for granting reconsideration as well.

Second, although the Department evaluated Verizon's market power by considering the three factors of supply elasticity, market share, and demand elasticity; it would be incorrect, as the Attorney General has done, to characterize the three factors as tests for which certain standards have to be achieved in each to "pass." All three elements were examined in this proceeding in order to develop a picture of the state of competition in the retail business market in Massachusetts. The record in this case clearly demonstrated the following: (1) the high supply elasticity of Verizon's competitors due to the availability of UNEs; (2) a receding market share for Verizon propelled by the growth of the CLEC industry (not necessarily in the number of CLECs, but rather in the CLECs' share of the market); and (3) the willingness and ability of business customers to switch providers. Phase I Order at 89. The Department, therefore, has neither changed its standard of review, nor relied exclusively on its supply elasticity analysis for its determinations in this case.

Third, the Department made clear that the purpose of its discussion of retail residential services in the Phase I Order was to "provide some tentative conclusions and guidance as to what may be appropriate in Phase II" and to "guide the parties in future presentation of evidence and proof [in Phase II]." Phase I Order at 96 and n.60. The word "tentative" made the Department's intentions and the status of these interim conclusions clear enough. The Department made no determinations or findings on residential service in the Phase I Order. Regulation of Verizon's retail residential services will be established in Phase II of this proceeding.

Finally, the Department does not share the Attorney General's interpretation of the effect of the D.C. Circuit Court's decision in United States Telecom Ass'n v. FCC, Case Nos. 00-1012 and 00-1015 (D.C. Cir. May 24, 2002), in which the D.C. Circuit Court remanded the FCC's UNE and line sharing rules. On May 24, 2002, FCC Chairman Michael Powell released a statement indicating that the FCC is already addressing in its Triennial Review⁵ many of the issues identified by the D.C. Circuit Court in its decision, and that "the current state of affairs for access to network elements remains intact." See Statement of FCC Chairman Michael Powell on the Decision by the Court of Appeals for the District of Columbia Regarding the Commission's Unbundling Rules (rel. May 24, 2002). Therefore, because the D.C. Circuit Court's remand has no immediate effect on Verizon's obligations to unbundle its network, UNEs remain available as a means of market entry and expansion for CLECs in Massachusetts, and there is no reason for the Department to revisit its conclusions in the Phase I Order on supply elasticity and market share.⁶

⁵ See Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers, CC Docket No. 01-338, Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, CC Docket No. 96-98, Deployment of Wireline Services Offering Advanced Telecommunications Capability, CC Docket No. 98-147, Notice of Proposed Rulemaking, FCC 01-361 (rel. Dec. 20, 2001) ("Triennial Review"). In its Triennial Review, the FCC will consider the circumstances under which incumbent LECs must make parts of their networks available to requesting carriers on an unbundled basis pursuant to 47 U.S.C. § 251(c)(3), (d)(2).

⁶ In the Phase I Order at 95 and n.59, the Department addressed the possibility of changes occurring in the competitive situation in Massachusetts, and required Verizon to provide an annual report on competitive activity for business and residential lines, disaggregated by Verizon retail, resale, UNE-P, UNE-loop, and full-facilities-based lines. The Department stated:

(continued...)

III. MOTION FOR EXTENSION OF THE JUDICIAL APPEAL PERIOD

A. Position of the Attorney General

In his Motion for Extension of the Judicial Appeal Period, the Attorney General requests that the Department extend the judicial appeal period to 20 days following the Department's action on the Attorney General's Motion to Reconsider the Department's Phase I Order (AG Motion to Extend at 1). The Attorney General argues that his Motion to Extend is necessary to preserve his rights on appeal during the pendency of the Motion to Reconsider (id.).

B. Standard of Review

G.L. c. 25, § 5, provides in pertinent part, that an appeal of a Department final order must be filed with the Department no later than twenty days after service of the order "or within such further time as the Commission may allow upon request filed prior to the

⁶(...continued)

[We have] concluded that the objective conditions exist, and likely will strengthen, for imposing a market-based pricing discipline on Verizon. . . . Satisfying [G.L. c. 159's requirement of just and reasonable rates] can be accomplished more efficiently by market forces than by present or conventional regulatory process. Should the situation change and a result equivalent to more conventional regulatory means no longer obtains [sic], Chapter 159 still provides the more conventional means to redress the situation.

Id. at 95. Therefore, even if significant changes do occur in the Massachusetts market, the Department has the ability to regularly monitor competitive conditions, and retains the flexibility to make changes in the regulatory framework if required.

expiration of the twenty days after the date of service of said . . . decision or ruling.”⁷ See also 220 C.M.R. § 1.11(11).

The twenty day appeal deadline indicates a clear intention on the part of the Legislature and the Department to ensure that the decision of an aggrieved party to appeal a final order of the Department must be made expeditiously. Swift judicial review benefits both the appealing party and other parties and serves the public interest by promoting the finality of Department orders. Ruth C. Nunnally d/b/a L&R Enterprises, D.P.U. 92-34-A at 4 (1993).

The Department’s procedural rules state that reasonable extensions of the appeal period shall be granted upon showing of good cause. 220 C.M.R. § 1.11(11). In regards to determining what constitutes good cause, the Department has stated:

Good cause is a relative term and it depends on the circumstances of an individual case. Good cause is determined in the context of an underlying statutory or regulatory requirement and is based on a balancing of the public interest, the interest of the party seeking an exception, and the interests of any other affected party.

Boston Edison Company, D.P.U. 90-355-A at 4 (1992).

Frequently, the Department must consider a request to extend the appeal period filed jointly with a motion for reconsideration. We announced our good cause standard in that context in Fall River Gas Company, D.P.U. 89-199-A (1989) (“Fall River Gas”), where we held that the contemporaneous filing by the Attorney General of a motion for reconsideration of a Department order was not sufficient to constitute good cause for purposes of tolling the

⁷ G.L. c. 25, § 5 states that “service shall be presumed to have occurred in the normal course of delivery of [the] mail.”

time period for filing an appeal, “notwithstanding the common practice of the Department to grant such motions when accompanied by a motion to reconsider a rate case [o]rder.” Fall River Gas at 7.

C. Analysis and Findings

The filing of the Attorney General’s Motion to Extend operated to toll the appeal period with respect to the Attorney General only, until the Department rules on the Attorney General’s motion. Eastern Edison Company, D.P.U./D.T.E. 96-24-A at 5 (1998). Because the Attorney General chose to file his motion on the last day of the appeal period, he would have no time to file an appeal if the Department were to deny his Motion to Extend.⁸ We find that under the circumstances of this case, no harm to the public or other parties will likely result if we grant the Attorney General a brief extension of the appeal period. We further determine that five business days is a reasonable period to extend the appeal period in this case. Therefore, within five business days of the date of this Order, the Attorney General may, if he so chooses, file a petition for appeal with the Secretary of the Department. Further, within ten days of the filing of such petition, the Attorney General may enter an appeal in the Supreme Judicial Court. See G.L. c. 25, § 5.

⁸ We note that no other party made a motion to extend the appeal period and, therefore, other parties are beyond the 20 day deadline for filing judicial appeals. Procedural relief, if granted, advantages only the movant. Eastern Energy Corp. v. Energy Facilities Siting Board, 419 Mass. 151, 153-154 (1994).

IV. MOTION FOR CLARIFICATION

A. Position of AT&T

In its Motion for Clarification, AT&T seeks confirmation from the Department that the Department's silence on certain issues in the Phase I Order does not constitute a ruling that such issues will not be considered for investigation in Phase II (AT&T Motion for Clarification at 1). AT&T argues that three issues in particular (i.e., universal service funding, Verizon's UNE use restrictions, and Verizon's prohibition against commingling access services and UNEs on the same facilities) should not be considered denied with prejudice because they were not addressed in the Phase I Order (id.). AT&T argues that in the Department's June 21 Interlocutory Order,⁹ the Department indicated that Phase II of the proceeding was reserved for addressing the parity of access to wholesale inputs and other conditions necessary to ensure efficient competition (id. at 4). Therefore, AT&T asserts that it refrained from presenting comprehensive evidence on such issues in Phase I, and that the Department should, at a minimum, receive evidence and argument before the Department determines whether they will be addressed in Phase II (id. at 4-5).

B. Standard of Review

Clarification of previously issued Orders may be granted when an Order is silent as to the disposition of a specific issue requiring determination in the Order, or when the Order contains language that is sufficiently ambiguous to leave doubt as to its meaning. Boston

⁹ Verizon, D.T.E. 01-31-Phase I, Interlocutory Order on Scope (June 21, 2001) ("June 21 Interlocutory Order").

Edison Company, D.P.U. 92-1A-B at 4 (1993); Whitinsville Water Company, D.P.U. 89-67-A at 1-2 (1989). Clarification does not involve reexamining the record for the purpose of substantively modifying a decision. Boston Edison Company, D.P.U. 90-335-A at 3 (1992), citing Fitchburg Gas & Electric Light Company, D.P.U. 18296/18297, at 2 (1976).

C. Analysis and Findings

The Department agrees with AT&T that the Phase I Order did not include specific findings on the three issues that AT&T identified in its Motion for Clarification: (1) universal service funding; (2) Verizon's UNE use restrictions; or (3) Verizon's prohibition on commingling access services and UNEs on the same facilities. We further agree with AT&T that no party in the first phase of the proceeding presented evidence to the Department concerning the first issue, universal service funding. AT&T did, however, provide evidence in Phase I on both UNE use restrictions (see Exh. ATT-3), and commingling prohibitions (see Exh. ATT-6). Because there may be confusion as to the Department's treatment of these three issues in the proceeding thus far, the Department grants AT&T's Motion for Clarification to the extent that we will further discuss the inclusion of these three particular issues in this proceeding, but we deny AT&T's motion to the extent that we do not agree that these issues should be part of Phase II.

We will begin our discussion by looking at AT&T's arguments on UNE use restrictions (Exh. ATT-3) and commingling prohibitions (Exh. ATT-6). Our evaluation of the sufficiency of competition for Verizon's retail business services was completed in Phase I with the issuance of the Phase I Order. In Phase I, we conducted a comprehensive evaluation of the

state of competition and concluded that with the safeguards enumerated in the Phase I Order, Verizon could be granted pricing flexibility for its retail business services. Phase I Order at 89-95. It is Verizon's compliance with the safeguards and conclusions reached in the Phase I Order, as shown in Verizon's filing of June 5, 2002, that will be the subject of Phase II, not the taking of further evidence and argument on how additional issues affect competition for Verizon's retail business services.¹⁰ As a result, both AT&T's UNE use restriction argument and commingling argument, which both concern competition for Verizon's retail business services, will not be part of Phase II.

However, we will address AT&T's assertion in its Motion for Clarification that, although it did present some evidence on these issues in Phase I, AT&T refrained from presenting "comprehensive evidence and argument" in the understanding that the issues would be the subject of Phase II. For several reasons, the Department finds this argument unpersuasive. First, the Department made clear that the first phase of this proceeding consisted of an investigation into the state of competition for the services for which Verizon sought pricing flexibility (i.e., retail business services as identified in Verizon's April 12, 2001 Proposed Plan). See June 21 Interlocutory Order at 16-17. The June 21 Interlocutory Order positively stated what the investigation would comprise. It was not necessary (indeed, it would have been impossible) to catalogue what was not included. Second, throughout Phase I, the Department gave the parties a full opportunity to provide, and the parties did provide,

¹⁰ As indicated in the Phase I Order at 96, 99-104, Phase II will also consist of a evaluation of the appropriate regulatory framework for Verizon's retail residential services.

evidence and argument on a wide-ranging array of issues that affect competition for business services in Massachusetts. That AT&T did provide evidence on UNE use restrictions and commingling prohibitions in Phase I argues against, rather than supports, AT&T's request for inclusion of those issues in the second phase of the proceeding. Finally, although the Department did not make specific findings on AT&T's UNE use restrictions and commingling arguments in the Phase I Order, the Department did make all findings necessary to support its conclusions in that Order. See G.L. c. 30, § 11 (8). The Department is not required to make detailed findings of all evidence presented to it, as long as the findings it makes are sufficiently specific to allow a court to review the decision. Town of Hingham v. Department of Telecommunications and Energy, 433 Mass. 198, 207-209 (2001). As discussed above in response to the Attorney General's Motion to Reconsider, the Department's findings of sufficient competition for Verizon's retail business services, given the safeguards expressed in the Phase I Order, are amply supported by the record in this case.

Turning to the first issue raised by AT&T in its Motion for Clarification (i.e., universal service funding), we determine that this issue warrants a different discussion but has a like result. Neither AT&T nor any other party presented any evidence or argument on universal service funding in Phase I. The Department did not request any because that issue is unrelated to competition for Verizon's retail business services. In the Phase I Order at 103, the Department envisioned a "further investigation" following the Department's action in this docket, to compare UNE rates to Verizon's residential rates to ensure efficient competition for Verizon's residential services.¹¹ A discussion of universal service funding as a method to

¹¹ In the Phase I Order at 103, the Department stated:

remedy inefficiency in the pricing of Verizon's basic residential services more appropriately belongs in that further investigation after new UNE rates have been established in D.T.E. 01-20, and after the comparison between UNE rates and Verizon residential rates has been made, rather than as a part of Phase II of this proceeding.

V. ORDER

Accordingly, after due consideration, it is

ORDERED: That the motion of the Attorney General for reconsideration filed with the Department on May 28, 2002, pertaining to the Department's Order dated May 8, 2002, be and is hereby denied; and it is

FURTHER ORDERED: That the motion of the Attorney General for extension of the judicial appeal period filed with the Department on May 28, 2002, is granted as modified; and it is

FURTHER ORDERED: That, pursuant to G.L. c. 25, § 5, the time within which the Attorney General has to file an appeal of the Department's May 8, 2002 Order is extended until five business days from the date of this Order; and it is

¹¹(...continued)

In order to ensure that the rates at which Verizon's basic residential services facilitate efficient facilities-based and UNE-based competition for those services, the Department will undertake, after the Phase II filing, a further investigation to compare UNE rates to Verizon's retail residential rates. If we conclude that retail rates are below UNE costs, and, thus, impede efficient competition for those services, we will take the appropriate steps to remedy the inefficiency.

FURTHER ORDERED: That the motion of AT&T for clarification filed with the Department on May 28, 2002, pertaining to the Department's Order dated May 8, 2002, be and is hereby granted in part, and denied in part, as discussed herein.

By Order of the Department,

_____/s/_____
Paul B. Vasington, Chairman

_____/s/_____
James Connelly, Commissioner

_____/s/_____
W. Robert Keating, Commissioner

_____/s/_____
Eugene J. Sullivan, Jr., Commissioner

_____/s/_____
Deirdre K. Manning, Commissioner

Appeal as to matters of law from any final decision, order or ruling of the Commission may be taken to the Supreme Judicial Court by an aggrieved party in interest by the filing of a written petition praying that the Order of the Commission be modified or set aside in whole or in part.

Such petition for appeal shall be filed with the Secretary of the Commission within twenty days after the date of service of the decision, order or ruling of the Commission, or within such further time as the Commission may allow upon request filed prior to the expiration of twenty days after the date of service of said decision, order or ruling. Within ten days after such petition has been filed, the appealing party shall enter the appeal in the Supreme Judicial Court sitting in Suffolk County by filing a copy thereof with the Clerk of said Court. (Sec. 5, Chapter 25, G.L. Ter. Ed., as most recently amended by Chapter 485 of the Acts of 1971).